

## **DOMICILE and RESIDENCY FOR MILITARY FAMILIES**

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**Definition of Domicile.** "That place where a man has his true, fixed, permanent home and principal establishment, and to which whenever he is absent he has the intention of returning."

"As 'domicile' and 'residence' are usually the same place, they are frequently used as if they had the same meaning, but they are not identical terms, for a person may have two places of residence, as in the city and country, but only one domicile. Residence means living in a particular locality, but domicile means living in that locality with intent to make it a fixed and permanent home. Residence simple requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place and also an intention to make it one's domicile. In re Riley's Will, 266 N.Y.S. 209, 148 Misc. 588." Blacks Law Dictionary 572 (5<sup>th</sup> ed. Rev. 1979).

**1. The Importance of Your Domicile.** Your domicile is the state of your permanent home, or it is the place you regard as your home whenever you are away. For this reason and for many types of legal matters, your state of domicile is an important place for you. Your state of domicile, for example, is the place that usually has the power to tax your income or dissolve your marriage or distribute your property upon your death. The Soldier' and Sailors' Civil Relief Act, 50 USC App § 520, protects active duty military pay from being taxed by any state other than the service member's state of domicile. From a legal point of view therefore, your domicile is often more important to you than the place in which you are physically present or the place at which you are residing or the place in which you are stationed. Depending upon the purpose for which it is used "residence" may mean the same as domicile, and one must look to the specific definition in any state or federal statute to determine how "residence" is defined for each and every purpose. You may be a resident of one state and a domiciliary of another state.

**2. Domicile By Operation of Law and Domiciles of Choice.** Everyone has a domicile. Most of us are able to identify the place which is our domicile because it is the place we call home, but for quite a few of us who have moved a lot or who are in the military, it is sometimes not that easy to determine our state of domicile. We are born with the domicile of our parents, by operation of law -- without any choice in the matter, and until we are free to leave home we acquire any new domicile our parents may acquire, by operation of law. When we leave home however, to go to college or to go into the service, for example, we are able acquire a state of domicile by choice. A few years ago the law was that a woman acquired the domicile of her husband, by operation of law. That has now changed in most states. A woman who marries can choose to remain domiciled in the place she came from or she can choose to become a

domiciliary of the place her husband comes from. A man can also choose to become domiciled in the place his wife comes from. You need to determine what the law is in both the husband's state of domicile and the wife's state of domicile to make a change. Even though a service member and spouse are stationed in one state, they may each be "domiciled" in another state.

**3. Acquiring a Domicile of Choice.** To acquire a domicile of choice in a new place two things must happen: (1) you must be in the state and (2) while you are there and before you leave it you must intend to make it your permanent home. You do not need to live in the state, own a home in the state, or to have an address in the state to be domiciled in it. You only need to be physically present in the state at the time you decide to make it your permanent home. You could for example, drive through the state and be so struck by its beauty that you immediately adopt it as your permanent home, but if you do not have feelings about the state before you drive out of it, your domicile has not changed. To prove changes of domicile see paragraph 5 and the attached list.

**4. Domicile is a State of Mind.** Domicile therefore is primarily a state of mind that a certain place is your permanent home. It is a mental attachment that you carry around with you. Once you acquire a domicile it remains your domicile, even though you leave it, unless your state of mind changes while you are in another place.

**5. Proving Your Domicile Has Changed.** If your state of domicile changes, you may have to prove it. You might, for example, have decided to stop paying state income taxes because your domicile changed. The state losing tax revenue may question the change. Or your spouse, for example, might sue for divorce in your former domicile, and you might not like the divorce laws there. If you can prove your domicile changed, you might be able to get the case dismissed. In the case of taxes, if you cannot prove your domicile changed, you could end up owing taxes to two or more separate states, and require that an appellate court decide the matter. Proving domicile is a question of proving your state of mind. State of mind is proven in court every day. We rely on external evidence or indications of what your state of mind is. Your statement that a certain place is your permanent home is evidence of your state of mind. The best evidence of your state of mind are the contacts that other people can see that you have with a state. For the kinds of contacts you may need to prove your state of domicile see the list below. You will not prove that your domicile has changed if the other side can show that are calling a place your home just to get the benefit of the legal consequences that a change of domicile would give you. The issue of domicile is not a "shell game" to avoid taxes – it is your real and honest intention to make a state your permanent home. You should have all your contacts with the one state you call your permanent home. If you have contacts with multiple states, it may be difficult or impossible to prove your state of domicile

**6. Domicile Does Not Mean the Same Thing as “Home Of Record”.** If you are a service member you have a "home or record" as well as a domicile. Home of record does not mean the same thing as domicile. Unlike domicile, the concept of "home of record" has only a single purpose. Home of record is an administrative convenience for the military. The military uses home of record to determine how far they will pay to ship your household goods when you leave active duty. It just so happens that in most cases service members join the military in their home town or state. If this is the case with you, your home of record is same as your domicile. But this need not be the case. For example, you could be from Florida but have come into the Coast Guard in Virginia. In this case your home of record might turn out to be some in place in Virginia, although you are still domiciled in Florida.

**7. Make Sure Your Domicile Is Properly Declared In Your Military Records.** The rules for changing your home of record are not the same as rules that apply when your domicile changes. Unlike domicile, you can only change your home or record at a certain time, when you reenlist for example. Because some military personnel in administrative jobs have a tendency to think that home of record and domicile mean the same thing, service members sometimes are told that they cannot change their domicile unless they reenlist. This erroneous advice has, in some cases, resulted in the military withholding income from the pay of a service member for state income tax purposes and paying the amounts withheld, perhaps for a period of several years, to a state which is not entitled to receive the money. To make sure that your active duty military pay is being correctly withheld and paid to a state which is entitled to receive it, you must file a DD Form 2058, State of Legal Residence Certificate, through your unit's administrative section. Do not allow anyone there to tell you that you cannot file this certificate. Once filed, this certificate will go through channels to finance where it will be used to determine whether pay should be withheld from your income and, if so, how much should be withheld and to which state it should be paid. If you declare a change in your domicile on this certificate you should know that the military will notify the state which was your former domicile about your action. You should therefore be prepared to prove that your domicile has indeed changed as discussed in paragraph 3.

**Note:** This is intended as general legal advice. If you have questions regarding your domicile or other legal matters call the Legal Assistance Branch, MLCPAC (I) for an appointment with a legal assistance attorney.

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Indications of Domicile (numbers 1 through 11 are important – others are not required, but may help in a questionable situation):

1. **Expressed intent, oral or written and physical presence, past and present (including duration) [Prerequisite to establishing domicile].**
2. **Voter registration. [Important factor.]**
3. **Vehicle registration as a resident vice non-residence military [Important factor – but you have a choice.]**
4. **Motor vehicle operator's permit. [Important factor.] (See the MLCP (II) information paper on California driving laws for military families.)**
5. **Location of bank and investment accounts.**
6. **Explanations for temporary changes in residence.**
7. **Submission of DD Form 2058 (Change of domicile form).**
8. **Payment of taxes (income and personal property). [Important factor.] But see Wolff v. Baldwin, 9 NJ Tax 11 (N.J. Tax Court 1986) (One cannot establish domicile by paying taxes alone; physical presence is also necessary.)**
9. **Payment of nonresident tuition to institutions of higher education**
10. **Declarations of residence on legal documents such as wills, deeds, mortgages, leases, contracts, insurance policies, and hospital records. [Important factor.]**
11. **Declarations of domicile in affidavits or litigation. [Important factor.]**
12. **Residence of immediate family.**
8. **Membership in church, civil, professional, service or fraternal organizations.**
9. **Ownership of burial plots.**
10. **Place of burial of immediate family members.**
11. **Location of donees of charitable contributions.**
12. **Location of schools attended by children.**
13. **Ownership of real property. [Important factor. However, ownership of property in another state will not disqualify.]**
  - Leasehold interests.
  - Situs of personal property.
14. **Home of record at the time of entering service.**
15. **Place of marriage.**
16. **Spouse's domicile.**
17. **Place of birth.**
18. **Business interests.**
19. **Sources of income.**
20. **Outside employment.**
21. **Address provided on federal income tax return.**